IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6250 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AMINABEN YUSUFBHAI FULANI

Versus

STATE OF GUJARAT

Appearance:

MR MA KHARADI for Petitioner

MR UR BHATT AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 24/08/2000

ORAL JUDGEMENT

The petitioner who is a lady-detenu has filed this writ petition under Article 226 of the Constitution of India challenging legality of order of detention dt. 6th March, 2000 passed by respondent no.2 in respect to the detenu.

2. The detaining authority has passed said order of detention under Sec.3(2) of the Gujarat Prevention of Antisocial Activities Act, 1985 on the ground that detenu is a "bootlegger" within the meaning of Sec.2(b) of the Gujarat Prevention of Antisocial Activities Act, 1985 (shortly the "Act), and that her activities are prejudicial to the maintenance of public order. Detaining authority has stated about five prohibition cases lodged against detenu with "B" Division Police Station of Rajkot City for offences punishable under the Bombay Prohibition Act. Out of that five cases, first three cases are pending for trial in Criminal Court, while rest of the two criminal cases are pending with Investigating Officer for investigation.

3. Respondents have not filed any affidavit-in-reply in the reply to the writ petition filed the detenu. This Court has, in Special Civil Application No. 6322 of 1999 decided on 11th February, 2000 deprecated the practice of not filing affidavit-in-reply in such type of cases. Thus, it appears that the respondents have not controverted the grounds under which the said order of detention has been attacked and challenged in this writ petition.

4. Shri M.A.Kharadi, learned advocate for the detenu has argued that looking to the papers of grounds of detention supplied to the detenu, last fifth case wherein CR.No.Prohibition 87/2000 was registered against the detenu on 1st March, 2000. In that case, she was arrested by the Police on 6th March, 2000 and on the same day, i.e. on 6th March, 2000, she was released on bail by the Criminal Court. Looking to the papers of grounds of detention in which it is stated by the detaining authority that the detaining authority has taken into consideration the papers relating to last criminal case bearing CR.No.Prohibition 87/2000. From papers, it also appears that on 6th March, 2000, statement of petitioner was recorded by Police Sub Inspector and on that very day statement of co-accused Ratilal Talsibhai Vedva was also recorded by Police Sub Inspector. From the papers supplied to the detenu, it appears that none of the statements was verified by detaining authority -himself. It is interesting to note that the detenu was arrested on 6th March, 2000, and she was produced before the learned Judicial Magistrate, First Class, Rajkot on that very day i.e. on 6th March, 2000, and on the same day, the detaining authority has passed the order of detention. Mr. Kharadi has argued that looking to this relevant dates, it clearly appears that the detaining authority has not applied his mind for his subjective satisfaction

before passing the order of detention. Mr. Kharadi has placed reliance on the case of KALIDAS CHANDULAL KAHAR VS. STATE OF GUJARAT AND ORS, reported in(1993) 2, 34(2) G.L.R. 1656 of this court, wherein this Court has observed that the detaining authority is expected to do some exercise before actually passing the order of detention.

5. Here in this case, looking to the facts and circumstances of this present case, the detaining authority had no time to verify the statements of witnesses recorded in the last case. In view of that, there is a doubt that he had not subjectively satisfied himself before passing the order of detention against the detenu.

6. In view of the above, this petition deserves to to be allowed and accordingly it is allowed. The order dt. 6th March, 2000 passed by the respondent no.2 which is challenged in this writ petition is bad and illegal and the same is quashed and set aside. The detenu is ordered to be set at liberty forth with, if she is not wanted in any other criminal case or Proceeding. Rule is made absolute accordingly.

Direct Service is permitted.

Date: 24/8/2000. (H.H.MEHTA,J.)
ccshah